

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

Criminal No. 18-292

ROBERT BOWERS,

Defendant.

- - -

Transcript of proceedings on May 23, 2019 United States
District Court, Pittsburgh, Pennsylvania, before Judge
Donetta W. Ambrose.

APPEARANCES:

For the Government: U.S. Attorney's Office
Soo Song, Esquire
Troy Rivetti, Esquire
U.S. Courthouse
700 Grant Street
Pittsburgh, Pennsylvania 15219

U.S. Attorney's Office
Julia Gegenheimer, Esquire
601 D Street NW
Washington, DC 20004

For the Defendant: Clarke Johnston Thorp & Rice, PC
Judy Clarke, Esquire
1010 Second Avenue
Suite 1800
San Diego, California 92101

Federal Public Defender's Office
Elisa A. Long, Esquire
Michael J. Novara, Esquire
1001 Liberty Avenue
1500 Liberty Center
Pittsburgh, PA 15219

Court Reporter: Barbara Metz Leo, RMR, CRR
700 Grant Street
Suite 6260
Pittsburgh, Pennsylvania 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 10:12 a.m.

3 (Defendant not present.)

4 THE COURT: Good morning, everybody. We are here in
5 the case of the United States of America against Robert Bowers
6 at number 18-292 and we are here for a status conference. Who
7 wants to speak first? Ms. Clarke?

8 MS. CLARKE: Sure, Your Honor.

9 THE COURT: I just want to confirm before you begin,
10 Mr. Novara sent a message that Mr. Bowers had waived his
11 appearance today.

12 MS. CLARKE: That's correct.

13 THE COURT: So he has agreed not to be here for the
14 administrative things that we're going to talk about today.

15 MS. CLARKE: Correct. That is correct, and for the
16 record, Judy Clarke, Elisa Long and Michael Novara for
17 Mr. Bowers.

18 THE COURT: Thank you.

19 MS. CLARKE: So I'm not sure exactly how much
20 information the court wants to have regarding the status of
21 proceedings.

22 I can tell you that we did submit, as requested by
23 the Department of Justice and as noted in the pleading that
24 the government filed, our mitigation submission on the 15th of
25 April. We did meet with members of the U.S. Attorney's Office

1 on the 9th of May.

2 As the court knows, we have been focusing our time
3 and efforts on the authorization decision, not litigation of
4 the case. During that meeting, we reiterated our goal of
5 settling this case by way of guilty pleas to life in prison.
6 That issue is pending with the United States and the
7 Department of Justice.

8 Discovery is ongoing. We have been advised that
9 there will be more discovery coming in the coming days. I'm
10 not sure what that is, but it will be another production. We
11 do have some potential issues with discovery that we haven't
12 raised with the court because of the status of the case right
13 now, and we have some other issues that are percolating that
14 we may, at some point in the near future, raise with the
15 court, so that's the status from our vantage point.

16 THE COURT: Thank you. Who's going to speak for the
17 government? Mr. Rivetti, is that you?

18 MR. RIVETTI: Your Honor, I'll begin, and Ms. Song
19 will address some of the discovery issues. First of all, we
20 are proceeding internally within the Department of Justice
21 regarding the capital review process. That's an internal
22 confidential process, so we won't be getting into that in
23 court here today.

24 THE COURT: I did not expect that.

25 MR. RIVETTI: As well as Rule 11, we are not going to

1 get into plea negotiation type issues today.

2 THE COURT: Nothing to do with me.

3 MR. RIVETTI: Absolutely. The parties are continuing
4 to communicate on all of these issues, including discovery
5 issues, and Ms. Song can give the court a little more
6 information on discovery.

7 THE COURT: Thank you.

8 MS. SONG: Yes, Your Honor. We produced a
9 significant amount of discovery and a significant amount of
10 material at the defense team's request that is actually
11 outside of Rule 16. That is proceeding.

12 There are certain types of analyses and other
13 evidence that will be produced, and we are in active
14 discussions with the defense team regarding that.

15 As I said, to date, we have produced a significant
16 amount of material, to include electronic evidence, and we
17 anticipate that we'll continue to provide discovery and other
18 materials that the defense requests.

19 THE COURT: Ms. Clarke said you have a significant
20 soon to come amount of discovery.

21 MS. SONG: I think what she said is that there was
22 additional discovery coming. I wouldn't want to characterize
23 the quantum versus the rest of it. To this point, we have
24 been discussing issues, and I'm sure if there comes a time
25 when there are issues for the court, defense counsel or we

1 will raise them for your attention.

2 THE COURT: And we are all thinking that the August
3 15 date is still good for the pretrial motions or not?

4 MS. CLARKE: No, we are not. In fact, the parties
5 were talking about whether or when we should set another
6 status conference. Probably before that date to continue that
7 Rule 12 motions date again. I don't know whether the court
8 just wants to do that now.

9 THE COURT: Sure. I don't have a calendar.

10 THE CLERK: I do, judge.

11 MS. CLARKE: I think the parties are in agreement
12 that what's called the pretrial motions and Rule 12 motions
13 would be put off after whatever decision is made, you know.
14 If there's no need for further litigation, then that's great.
15 If there is, then we would certainly need time.

16 THE COURT: Sure, but I don't think anybody can
17 really predict when that's going to happen.

18 MS. CLARKE: Correct. Certainly not this side of the
19 courtroom.

20 THE COURT: Right. Let me look. So sometime before
21 August 15. August 12 is a Monday. I could do it then. I
22 could also do it August 14.

23 MS. CLARKE: I think we were just collaborating. I
24 think those dates are bad. Maybe the last week of July would
25 be safest, if that works for the government.

1 MS. SONG: Not necessarily. The week of the 12th is
2 not good for you all. Alternatively we can confer and propose
3 to the court.

4 MS. CLARKE: Sure.

5 THE COURT: Let me ask you this: Is there some day
6 in the week -- are you saying the week of July 29 is not good
7 for the government?

8 MR. RIVETTI: That's not good for the government,
9 Your Honor.

10 THE COURT: And the week after that is not good for
11 you or it is?

12 MS. CLARKE: For somebody at this table. The 1st or
13 2nd of August seems to work.

14 MR. RIVETTI: That week is bad for us, Your Honor.

15 THE COURT: How about the next week? How about the
16 week of the 5th of August?

17 MS. LONG: That doesn't work.

18 MR. NOVARA: How about the 22nd of July?

19 THE COURT: Is that too soon?

20 MS. CLARKE: I don't know if we're going to know a
21 whole lot more by then.

22 MR. NOVARA: We can always move to continue it.

23 THE COURT: What did you say, Mr. Novara?

24 MR. NOVARA: The week of the 22nd.

25 THE COURT: I think someone already said that was not

1 good.

2 MR. RIVETTI: July 22nd week works for the
3 government.

4 MS. CLARKE: It doesn't work for me. I mean, I could
5 do the Friday of that week, the 26.

6 THE COURT: No, I can't do that. So we are not good
7 at all the week of July 29 and we are not good at all the week
8 of August 5; is that right?

9 MR. RIVETTI: That's correct, Your Honor.

10 THE COURT: August 12 is no good either, right? Let
11 me say this: Perhaps if you don't feel that you are going to
12 know a whole lot by then, let's just assume that, and if
13 something comes up, we can always change it, we can do a phone
14 conference. Probably anybody can do that in any of those
15 weeks, or is that out of the question too in the weeks that
16 were not good?

17 MS. SONG: That would be fine.

18 MS. CLARKE: Michael is potentially out of the
19 country.

20 MR. NOVARA: Just the week of the 12th or the 19th,
21 it's not clear yet, of August.

22 THE COURT: The 19th would be beyond the 15th so we
23 wouldn't do that anyway. What about August 5? Is there
24 anybody who couldn't do a phone conference on August 5?

25 MS. CLARKE: That would work.

1 MR. RIVETTI: That works for us, Your Honor.

2 THE COURT: How about that then? How about 10:15
3 again? We'll do a phone conference, and if there's going to
4 be an extension, then it can be filed by someone over here
5 before the 15th.

6 MR. NOVARA: Sure.

7 THE COURT: Because I'm thinking -- well, I'm
8 thinking you are probably right that we're not going to know a
9 whole lot more, but if there are issues, discovery issues, you
10 know where I am, just bring them to me, and I'm sure, if there
11 are going to be pretrial motions, there will be plenty, but if
12 there aren't, there won't be.

13 Is there anything further from the government?

14 MR. RIVETTI: No, Your Honor.

15 THE COURT: Ms. Clarke?

16 MS. CLARKE: No. Thank you, Your Honor.

17 THE COURT: Thank you all very much. We'll talk on
18 August 5. I'm just handing a letter from Frederick Banks that
19 I received that he requested that I give to both the
20 government and the defense and I'm doing it just because I
21 want everything to be completely open. Okay. Thank you all.

22 (At 10:22 a.m., the proceedings were adjourned.)
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, BARBARA METZ LEO, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

\s\ Barbara Metz Leo
BARBARA METZ LEO, RMR, CRR
Official Court Reporter

09/26/2019
Date of Certification